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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.	)	
	)	RM-8389
Proposed Revision of Part 69 of the Commission's Rules to Allow for Incentive Settlement Options for NECA Pool Companies	)	

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, American Telephone and Telegraph Company ("AT&T") submits these comments on the above-captioned rulemaking petition by the National Exchange Carrier Association, Inc. ("NECA") to establish "incentive settlement options" for local exchange carriers ("LECs") in NECA's pools.

AT&T supports the principle of incentive regulation for small LECs to further the Commission's stated goals of encouraging greater efficiency, productivity and technological innovation by those carriers while offering the benefits of lower rates and non-discriminatory pricing to access customers. NECA's proposal, however, falls short of satisfying the Commission's objectives. Rather than immediately initiating NECA's suggested rulemaking, the Commission should devote its finite resources to resolving other

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pending regulatory initiatives on access charge matters. Once further experience has been gained from the operation of current LEC incentive regulation plans, an acceptable plan for these small carriers may be devised.

Only six months ago, the Commission concluded a major rulemaking in Docket 92-135 on means of improving rate regulation of small and mid-sized LECs.[1] Although the Commission there had expressly solicited comments on means of permitting incentive regulation for members of NECA's common line ("CL") and traffic sensitive ("TS") access pools, NECA failed then to put forward any specific plans for such regulation.[2] Nevertheless, in its current rulemaking petition NECA now proposes two incentive alternatives for its member LECs: a "pool profit sharing option," and a "pool small company incentive option."

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1 See Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 92-135, Notice of Proposed Rulemaking, 7 FCC Rcd. 5023 (1992)("NPRM"); Report and Order, 8 FCC Rcd. 4545 (1993)("OIR Order"). That rulemaking was initiated in response to the Commission's finding in its LEC Price Cap Order that a fuller record was required before further incentive regulation plans could be crafted for small and mid-size LECs. See Policy and Rules for Rates of Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 6 FCC Rcd. 6786, 6826 (1990)(¶ 331) ("LEC Price Cap Order").

2 See NPRM, 7 FCC Rcd. at 5030; OIR Order, 8 FCC Rcd. at 4562.

NECA's profit sharing option is avowedly modeled on the optional incentive regulation ("OIR") plan adopted in Docket 92-135.[3] The small company option is similar to the regulation currently permitted under Section 61.39 of the Commission's rules (as modified in Docket 92-135) for LECs with 50,000 or fewer access lines, allowing carriers to set rates based on historic information.[4] Under the proposal, NECA's tariff rates will be set by summing the forecasted settlements for carriers opting these plans, average schedule settlements and cost company revenue requirements, and dividing the total by the total forecasted demand for all pool members. Petition, p. 7. However, despite their different pool settlement formulas, LECs adopting either of the proposed alternatives will continue to assess

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[3] LECs could elect this option either for both their CL and TS rates, or for their TS rates alone, and would be required to participate for at least two two-year periods. Rates for these carriers would be retargeted to the authorized return biennially, based on historic data from the prior period as adjusted for exogenous changes, with the carriers subject to profit sharing for earnings 150 basis points above, or 75 basis points below, the authorized rate of return. Petition, pp. 8-9.

[4] LECs electing this option would be required to participate for only a single two-year period, and would not be subject to profit sharing or to exogenous cost adjustments. Rates would be retargeted to the authorized return after the close of each two-year period. Petition, pp. 11-12.

NECA's uniform tariff rates on their access customers. Id., p. 6.

NECA's rulemaking proposal is deficient in several respects. As a threshold matter, reliance on the OIR Order as a model for incentive regulation of NECA pool members is, at best, premature. To date, only one LEC has elected to be regulated under the OIR plan, and even that one carrier's incentive regulation tariffs have yet to take effect.[5] The Commission should allow itself time to acquire actual experience with the efficacy of the OIR plan before it entertains any request such as NECA's to modify that plan for application to pool member LECs.[6]

Apart from its untimeliness, moreover, NECA's proposal does not appear calculated to satisfy the

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5 See Cincinnati Bell Telephone Transmittal No. 636, filed October 1, 1993. The rates filed by Cincinnati Bell under the OIR plan are especially troubling because they represent an increase over the pre-existing tariffs implemented under rate of return regulation.

6 However, the OIR Order dramatically illustrates the need for the Commission to weigh the need to conserve its finite resources against the purported benefits of incentive regulation for small LECs. Despite the voluminous record compiled there after a lengthy notice and comment rulemaking, and a detailed Commission order evaluating those submissions, as noted above to date only one LEC has sought to avail itself of the additional incentive regulation alternative established by the Commission.

Commission's goals for incentive regulation.[7] In particular, NECA's incentive regulation plan fails to provide substantial incentives for increased efficiency or benefit to access ratepayers. This is because, under NECA's proposal, incentive plan LECs that achieve earnings in excess of the upper boundary would share those excess earnings first with other incentive LECs that have earned below the lower earnings threshold, and only thereafter (if there is any excess remaining) with their access customers.[8] In addition, it appears possible that the earnings of the incentive pool members could influence, or be influenced by, the earnings of the non-incentive members of NECA's pools, thereby further diluting any residual customer benefit from its proposal.

Moreover, the proposal does not explain how access demand would be stimulated by an incentive plan LEC, or how access ratepayers of such a LEC would receive any distributions that might occur under NECA's plan, because the Petition states (p. 6) that LECs electing the incentive option will "continu[e] to charge customers at

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7 See, e.g., LEC Price Cap Order, 6 FCC Rcd. at 6787 (¶ 2)(Commission's objective is to "advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services").

8 See Petition, p. 9.

NECA uniform rates." Thus, the proposal may not stimulate LEC efficiency or encourage efficient, non-discriminatory access pricing -- key objectives of the Commission's incentive regulation rulings.

Indeed, the fact that adoption of NECA's proposed plan by its pool members would be optional could potentially operate to the detriment of the Commission's goal of promoting additional carrier efficiency. For example, LECs that anticipate significant near-term cost economies (for example, through recent installation of new digital switches) could elect treatment under NECA's plan simply to retain more of the earnings achieved through these network upgrades. At the same time, other pool LECs that do not anticipate productivity gains are free to remain subject to rate of return regulation. Such an "adverse selection" process by the LECs would not achieve any greater efficiencies than those already reflected in their current plans.[9]

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[9] Indeed, as NECA points out (Petition, p. 7 n.16), its proposed incentive plan is already very similar to the current average schedule settlement procedure. Moreover, there would be even less incremental benefit from NECA's proposal here if its outstanding petition to expand average schedule eligibility to any cost pool LEC with less than 10,000 access lines is granted by the Commission. See NECA Petition for Rulemaking in Proposed Revision of Section 69.605 of the Commission's Rules to Allow Small Cost Settlement Companies to Elect Average Schedule Settlement Status, RM-8357, filed September 13, 1993.

In sum, even if there were adequate experience with optional incentive regulation (and as yet there is not), NECA's proposal contains several apparent deficiencies that should preclude an immediate rulemaking based on its Petition. Moreover, developing a suitable incentive regulation plan for the small LECs that make up NECA's pools at this juncture may divert Commission resources required at this time to address other pending proceedings on important access charge issues, such as the Universal Service Fund ("USF").[10] Accordingly, AT&T suggests that the Commission resolve those pending matters before again taking up the question of incentive regulation for NECA's pool members. In the interim, experience under the OIR plan should be monitored so that those data can be used as a basis for evaluating future incentive regulation proposals for pool LECs that will more appropriately fulfill the Commission's goals.

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[10] See, e.g., Amendment of Part 36 of the Commission's Rules, and Establishment of a Joint Board, CC Docket No. 80-286, Report and Order, FCC 93J-2, released December 10, 1993 ("Joint Board")(indicating Commission plans to conduct comprehensive rulemaking on causes and correction of anomalous USF growth).

WHEREFORE, for the reasons stated above the Commission should decline to initiate a rulemaking on the incentive settlement options described in NECA's petition.

Respectfully submitted,

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December 16, 1993

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 16th dAY of December, 1993, a copy of the foregoing "AT&T Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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